



# WASHOE COUNTY

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CM/ACM \_\_\_\_\_  
Finance DN  
DA \_\_\_\_\_ ✓  
Risk Mgt DE  
HR N/A  
Other N/A

## STAFF REPORT

BOARD MEETING DATE: April 14, 2015

**DATE:** March 20, 2015  
**TO:** Board of County Commissioners  
**FROM:** Wendy Pitts, Property Program Manager,  
Community Services Department, [wpitts@washoecounty.us](mailto:wpitts@washoecounty.us)  
**THROUGH:** Dave Solaro, Arch., P.E., Director  
Community Services Department, 328-2040, [dsolaro@washoecounty.us](mailto:dsolaro@washoecounty.us)  
**SUBJECT:** Approve an Agreement between Mercey Springs 152 Partners, LLC and Washoe County for a thirty six (36) month term, commencing July 1, 2015 through June 30, 2018, for the continued occupancy of the North Valleys Library Branch located at 1075 North Hills Boulevard, Reno [\$172,992 with a 2.5% annual increase]. (Commission District 5.)

### SUMMARY

The purpose of this staff report is to request approval of an Agreement between Washoe County and Mercey Springs 152 Partners for a thirty six (36) month term, commencing July 1, 2015 through June 30, 2018, to allow for the continued occupancy of the North Valleys Library Branch located at 1075 North Hills Boulevard, Suites 310 and 330.

Washoe County Strategic Objective supported by this item: Sustainability of our financial, social and natural resources.

### PREVIOUS ACTION

Multiple lease agreements related to this occupancy have been approved by the Board of County Commissioners (Board) since 1994.

August 10, 2010 – The Board approved a sixty month lease agreement for the continued occupancy of the North Valley's Library Branch, which included a 2 year concession rate.

### BACKGROUND

The Library Department was one of the hardest hit with the tiered budget reductions and was preparing to close this branch when the Property Ownership agreed to provide a lease reduction rate and has continued to support the Library System with reduced lease rates since 2009, for the entire 9,178 square feet of space.

The Proposed Lease Agreement as presented shall be for a three year term, commencing July 1, 2015 through June 30, 2018. This location served 88,749 visitors this past year and this branch continues to serve a large population base at a low cost rate. The proposed Agreement contains Termination and Standard Funding Out clauses, if necessary, for future years.

AGENDA ITEM # 11

**FISCAL IMPACT**

The lease rate for this Agreement shall be fixed for the thirty-six (36) month period commencing July 1, 2015 under the terms proposed below.

| <b><u>TERM</u></b> | <b><u>Monthly Rent</u></b> | <b><u>Monthly CAM</u></b> | <b><u>Annual</u></b> |
|--------------------|----------------------------|---------------------------|----------------------|
| 7/1/15 – 6/30/16   | \$11,316.58                | \$3,100*                  | \$172,992            |
| 7/1/16 – 6/30/17   | \$11,599.50                | \$3,162*                  | \$176,658            |
| 7/1/17 – 6/30/18   | \$11,889.49                | \$3,225*                  | \$181,374            |

\*CAM (Common Area Maintenance) is an estimate and is reconciled at calendar year end.

Funding for annual lease costs are budgeted in cost center/account number 105000–710600. The FY16 costs for County leased property have been provided to the Budget Division for inclusion in the Fiscal Year 2016 Base Budget.

**RECOMMENDATION**

It is recommended the Board of County Commissioners approve an Agreement between Mercey Springs 152 Partners, LLC and Washoe County for a thirty six (36) month term, commencing July 1, 2015 through June 30, 2018, for the continued occupancy of the North Valleys Library Branch located at 1075 North Hills Boulevard, Reno.

**POSSIBLE MOTION**

Should the Board agree with staff’s recommendation, a possible motion would be: “Move to approve an Agreement between Mercey Springs 152 Partners, LLC and Washoe County for a thirty six (36) month term, commencing July 1, 2015 through June 30, 2018, for the continued occupancy of the North Valleys Library Branch located at 1075 North Hills Boulevard, Reno.”

**AGREEMENT**

THIS AGREEMENT (“Agreement”) made and entered into this \_\_\_ day of \_\_\_\_\_, 2015, by and between MERCEY SPRINGS 152 PARTNERS, LLC, hereinafter referred to as “Lessor” and WASHOE COUNTY, NEVADA, a political subdivision of the State of Nevada, hereinafter called “Lessee”.

**W I T N E S S E T H:**

WHEREAS, Lessor is the sole owner of the Premises located at 1075 North Hills Blvd., Washoe County, Nevada; and

WHEREAS, Lessee through past Agreements has been occupying space in said building since January 1994; and

WHEREAS, the parties desire by this Agreement to define their respective rights, duties and liabilities for the continuing occupancy of 9,178 sf of office space used by Lessee’s North Valley Branch Library; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

**SECTION ONE**

**DESCRIPTION OF PREMISES**

Lessor hereby demises unto Lessee a portion of that building generally known and designated as 1075 North Hills Blvd, # 330 and # 310, Washoe County, Nevada, 89506, containing approximately 9,178 square feet, together with the use of the entrances, common areas, parking areas, hallways, elevators, restrooms, and exterior grounds, in common with Lessor and other lessees of Lessor. Unless otherwise specified, “Premises” shall include only that portion used exclusively by Lessee.

**SECTION TWO**

**TERM OF AGREEMENT**

The term of this Agreement shall be for Thirty-six (36) months commencing July 1, 2015 and terminating on June 30, 2018, unless extended or sooner terminated upon mutual agreement of the parties or as otherwise provided herein.

**SECTION THREE**

**RENTAL AND COMMON AREA EXPENSE**

Effective upon the commencement date as defined in Section Two, Lessee agrees to pay Lessor, at such place as Lessor shall designate from time to time in writing, rent for the Premises described in Section One, above, as follows:

A. Base Monthly Rent:

The sum of Eleven Thousand Three Hundred Sixteen Dollars and fifty eight cents (\$11,316.58) per month for the initial twelve month (12) month period commencing July 1, 2015 through June 30, 2018, and shall include a 2.5% annual increase, unless changed as specifically provided herein.

B. Base Monthly Rent for each subsequent year shall be as follows:

|                  |                  |
|------------------|------------------|
| 7/1/16 – 6/30/17 | \$11,599.50 / mo |
| 7/1/17 – 6/30/18 | \$11,889.49 /mo  |

C. It is understood that Lessee agrees to pay in addition to the base monthly rent an estimated monthly fee towards the “common area” maintenance expense (“CAM”). The parties agree that Lessee’s prorata share of the CAM shall be 8.44%, except that the Lessee’s pro rata share of In-Line CAM, property insurance, trash and utilities (which are defined as CAM items, and utilities which anchor tenant pays for separately) shall be 19.25%, and Lessee’s pro rata share of real property taxes shall be 8.85%. As soon as reasonably practical after the expiration of each calendar year, Lessor shall deliver to Lessee a statement setting forth the expenses for the Common Area for such calendar year and the increased amount, if any, of Lessee’s prorata share thereof, including: (a) the total of the specified category of expense incurred during the measuring period; (b) Lessee’s prorata share of such category of expense and Lessee’s aggregate contribution toward such category of expense; (c) the amount remaining unpaid toward Lessee’s

share of such category of expense or the amount by which Lessee's payments have exceeded Lessee's share thereof. If Lessee's share of such expense exceeds Lessee's payments for the measuring period, Lessee shall pay to Lessor the deficiency within forty-five (45) days after receipt of such statement. If said payments exceed Lessee's share of such expenses, Lessor shall refund any excess within forty-five (45) days so long as Lessee has no further obligation to Lessor under the terms of this Agreement. Lessee's liability in connection with the payment of its share of all such expenses shall be prorated on the basis of a three hundred sixty-five (365) day year to account for any fractional portion of a year included in the term of its commencement and/or expiration. Lessor will provide to Lessee copies of all statements and reasonable supporting data regarding such items as the calculation of Lessee's share thereof and of other expenses paid pursuant hereto, upon receipt of a written request to provide such statements.

D. CAM expenses mean the total of all items of cost and expenses related to owning, maintaining, operating and managing the Common Area as specifically described in Section Four below, inclusive of real property taxes, sewer assessments and applicable insurance.

E. All rental payments shall be made payable to Mercey Springs 152 Partners, LLC, c/o Selective Real Estate Investments, 15840 Ventura Blvd. Suite 310, Encino, CA 91436. Rent payable hereunder is due the first (1st) day of each month and if not received by the Lessor or properly deposited into the U.S. Mail system by the tenth (10th) day, Lessee agrees to pay a surcharge equivalent to five (5%) percent of the monthly rental. Notwithstanding the foregoing, no late charge shall be assessed with respect to the first late payment of rent in a twelve (12) month period.

#### **SECTION FOUR**

#### **COMMON AREA MAINTENANCE**

A. Lessor shall maintain the Common Areas in good condition and repair. The term "Common Areas" means all areas and facilities outside the Premises and within the exterior boundaries of the property that are provided and designated by the Lessor from time to time for the general use and convenience of the Lessee and other tenants or owners of portion of the property pursuant to reciprocal easement agreements and their respective authorized representatives and invitees.

B. Common area maintenance shall include, but is not limited to, all such maintenance, replacement and repair as shall be required to preserve and maintain the utility of the Common Area; including the 1) maintenance, repair, crack filling, resurfacing, repainting, and sealing of parking lot and painting of common pedestrian walkways, throughways, roadways, parking areas and patios; 2) sprinkler systems, gardening and landscaping areas; 3) lighting and all utilities utilized in connection therewith, 4) existing roofs and exterior roof coverings, and 5) exterior supporting structures and walls, and the; sweeping, snow removal, trash disposal and other janitorial services of the common areas; reasonable management fees (not to exceed 6% of the rents); and other maintenance in the Lessor's judgment necessary for the operation of the Common Areas, inclusive of real property taxes, sewer assessments and applicable insurance. Notwithstanding anything to the contrary in this Agreement, Lessee shall not be responsible for and shall not pay for or contribute to capital building reserves.

#### **SECTION FIVE**

#### **OPTION TO RENEW**

Lessee may have the option to renew this Agreement for a period of Thirty-six (36) months to commence upon the expiration of this term. Written notice to renew shall be given at least one hundred eighty (180) days prior to the expiration of this Agreement. The base monthly rent for the initial twelve months shall be established at the then current base monthly rent and shall include a 2.5% increase for each year of the renewal term. CAM, as stated in Section Three above, shall be paid in accordance with Section Three (C) above. Any service by mail shall be deemed served upon deposit in the United States Post Office, excluding notices of renewal or termination which shall be sent return receipt requested.

#### **SECTION SIX**

#### **HOLDING OVER**

Lessee shall provide Lessor with sixty (60) day notice, prior to the expiration of the initial term or any extensions thereof, of their intent to holdover. Any holding over of the Premises by Lessee after the expiration of the term hereof (or any renewal period, as applicable) shall be construed to be a tenancy from month-to-month with no change in the base monthly rent or CAM amount due to a maximum period of four (4) months after which time Lessee will either quit and

vacate the Premises or enter into a new agreement. All other terms and conditions stated herein shall remain in full force and effect to the extent they are not inconsistent with this section. If Lessee fails to surrender the Premises upon the expiration of the holdover period, Lessee shall pay to Lessor as and for base monthly rent the amount of 125% above the current base monthly rent set forth herein. Lessee shall hold the Lessor harmless from all damages resulting from Lessee's failure to surrender, including without limitation, claims from a succeeding tenant resulting from Lessee's failure to surrender the Premises.

## **SECTION SEVEN**

### **USE OF PREMISES**

A. Lessee shall use and continuously operate the Premises for conducting the business activities of Washoe County Library System, North Hills Branch Library or for other related general government purposes. Lessee shall not use, or permit said Premises or any part thereof to be used for any purpose other than the conduct of the necessary business of Washoe County governmental programs, unless further agreed to by the parties.

B. Lessee shall not conduct or at any time knowingly permit its employees, agents or visitors to conduct activity on the Premises that is unlawful or in violation of any federal or state statute, code or regulation.

## **SECTION EIGHT**

### **ALTERATIONS AND IMPROVEMENTS**

A. The parties hereby acknowledge that the Premises are in good condition and working order, are architecturally acceptable to Lessee, and shall not be altered, repaired or changed except as provided herein.

B. Lessee agrees that it shall not erect partitions, install or change any doors or windows, or place any nails, screws or other implements or fasteners into the wood work or walls, except such items as are necessary to suitably decorate or make the Premises attractive for the purposes intended, without the prior written consent of Lessor. Upon Lessor's request, Lessee shall prepare plans and specifications of such work and submit the same to Lessor for its approval prior to making such alterations or improvements. Said approvals will not be unreasonably withheld provided Lessee agrees to restore the Premises to either a "carpeted vanilla shell

condition without partitions or demising walls” or its condition prior to Lessee’s installation of improvements.

C. The parties agree that all the erections, additions, fixtures and improvements made by Lessee in or upon said Premises, which cannot be removed without substantially affecting the integrity of the building, shall remain upon the Premises at the termination of said term by lapse of time or otherwise, without compensation to Lessee. All of Lessee’s movable equipment, office furniture, shelving and any decorative items, which can be removed without substantially affecting the integrity of the Building, shall be removed by Lessee at its expense.

D. The erection, construction, installation or making of any improvements shall be accomplished in a workmanlike manner and in compliance with all applicable federal, state, county and municipal laws and regulations.

#### **SECTION NINE**

#### **LESSOR IMPROVEMENTS**

A. Lessor reserves the right from time to time and at its own expense to make such improvements, alterations, renovations, changes, and repairs in and about the building in which the Premises are located, including the Premises, as Lessor shall deem necessary or desirable, provided Lessor gives Lessee prior to entering the Premises a minimum 48 hours notice of its intent to do so. Except where such improvements, alterations, changes and repairs unreasonably disrupt Lessee’s use and peaceful enjoyment of the Premises, Lessee shall make no claim against Lessor for abatement of rent for interference with Lessee’s leasehold interest or for loss or damage to its business during such improvements, alterations, changes and repairs. Certain improvements and repairs to the property that are part of CAM may be reimbursed, all pursuant to Sections Three and Four above.

B. Lessor shall make all improvements in a safe, workmanlike manner so as not to prove hazardous to Lessee and/or the public.

#### **SECTION TEN**

#### **MAINTENANCE, REPAIRS AND INSPECTIONS**

A. Lessee shall keep the Premises in good and working order, except for the items which are Landlord’s responsibility to keep, free from any liens arising out of any work that it may perform, or materials furnished, or obligations incurred by Lessee. Lessee shall have thirty (30)

days from the date of notice of said lien, as provided by Lessor, within which to remove said encumbrance without breaching the provisions of this Agreement.

B. Lessor shall maintain, repair and replace, at its sole cost and expense, the building, all HVAC, the parking areas, sidewalks, the roof, elevators, floors, exterior walls, and overhead roll-up doors on or at the property in which the Premises are located, subject to reimbursement as set forth in Sections Three and Four. Notwithstanding the above, any costs to be paid by Lessee related to replacement of the HVAC unit shall be amortized over five years. By way of example, if the replacement HVAC unit costs \$5,000 and there are 2 years left in the lease Term, then the amortized cost is \$1,000.00 per year, which results in a \$2,000.00 payment due to Lessor under this Paragraph. In the event that the Term is extended then Lessee shall pay such costs upon the extension of the Term.

C. Lessee accepts the existing plumbing, electrical, and HVAC system, and all improvements in place, as they exist at the time of execution of this Agreement, subject to Section 10 (B) above at the time of delivery of the Premises to Lessee.

D. Lessee shall permit Lessor or its authorized agent to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same, or for the purpose of making repairs or maintaining the building in which the Premises are located.

E. Lessor is solely responsible for compliance with the requirements of the Americans Disability Act (ADA), including any and all necessary modifications, and also changes in installations for supply of utilities or sanitary facilities. Notwithstanding the prior sentence, if such expenditures are necessary due to Lessee's adaptation or improvement to the Premises, Lessee shall be responsible for any necessary changes or alterations to the Premises at its own expense.

## **SECTION ELEVEN**

### **UTILITIES, CUSTODIAL AND TELEPHONE**

A. All gas, electricity, water, sewer, and other public utility uses specifically used upon and separately metered to the Premises, and janitorial services for the interior of the Premises, shall be paid at the sole cost and expense of Lessee.

B. Lessee shall provide interior window cleaning on a periodic basis, in accordance with Lessor's established schedule.

C. Lessee shall pay for all telephone service costs incurred for installation of equipment and establishment of initial service and for ongoing monthly service charges for equipment, fees, line and toll charges or any changes thereto specifically requested by Lessee.

**SECTION TWELVE**

**SIGNS**

Lessee purchased prior to the year 2000 and installed a fascia sign above the front entrance in conformance with Lessor's rules and regulations and Lessor consents to this improvement.

**SECTION THIRTEEN**

**WAIVER**

Any failure on the part of either party to take action against the other for any breach or covenant herein shall not be construed to constitute a waiver of any other or subsequent breach.

**SECTION FOURTEEN**

**DESTRUCTION OF PREMISES**

In the event of a partial destruction of the Premises or the buildings of which the Premises is a part during the term or renewal of this Agreement, from any cause, Lessor shall forthwith repair the same within one hundred-twenty (120) days, provided such repair can be made within said period under the laws and regulations of the state, federal, county or municipal authorities. If required repairs are commenced promptly, this Agreement shall not be modified, except that Lessee shall be entitled to a proportionate reduction of the base monthly rent and CAM if a portion of the Premises are rendered unusable or substantially impaired while repairs are being made. If such repairs cannot be made in one hundred-twenty (120) days, this Agreement may be terminated at the option of Lessee. Lessee shall notify the other of such party's election to terminate the Agreement within twenty-one (21) days following the date Lessee receives written notice from Lessor of its inability to repair the building within the one hundred-twenty (120) day period due to such damage or destruction. A total destruction of the building in which the Premises is situated shall terminate this Agreement. This provision is not intended to affect the

rights of either party to seek recovery against the person responsible for the damages, subject, however, to the provision of Section Fifteen below.

## **SECTION FIFTEEN**

### **CONDEMNATION**

In the event that thirty (30%) percent or more of the Premises hereby shall be condemned or taken by any county, federal, state or other authority for any purpose, then the term of this Agreement shall cease on the part so taken from the day the possession of that part is required for any public purpose. The base monthly rent and CAM shall be paid up to that day and thereafter the Lessee or the Lessor shall have the right to either cancel this Agreement or to continue in the possession of the remainder of the same under the terms herein provided, except that the base monthly rent and CAM shall be reduced in proportion to the area of that portion of the Premises taken for such public purpose. All damages awarded as compensation for diminution in value to the leasehold or to the fee of the Premises shall belong to and be the property of Lessor. Lessee shall have the right to claim and recover from the condemning authority such compensation as may be separately awarded or recoverable by Lessee in Lessee's own right on account of any and all damages to Lessee's business by reason of the condemnation and for or on account of any cost or loss to which Lessee might be put in removing Lessee's furniture, fixtures, equipment and leasehold improvements.

## **SECTION SIXTEEN**

### **INDEMNIFICATION**

A. Lessor shall hold harmless, indemnify and defend Lessee from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any third party arising out of the negligent acts or omissions of the Lessor, its agents or employees, in connection with the ownership of the Property and the Lessor's duties and responsibilities pursuant to this Agreement.

B. Pursuant to Nevada Revised Statutes, Chapter 41 and without waiving any provisions thereof, Lessee, shall hold harmless, indemnify and defend Lessor from and against any loss, damage, claim, suit or liability due to injury, including death, or property damage, to any third party arising out of the negligent or alleged negligent acts or omissions of the Lessee, its agents,

contractors or employees, arising out of the use of the Premises and the Lessee's duties and responsibilities pursuant to this Agreement.

## SECTION SEVENTEEN

### INSURANCE

A. Lessor shall:

(1) Secure and maintain fire and extended insurance on the building in which the Premises is located in an amount and coverage determined by Lessor during the term or any extended term of this Agreement, and other forms of insurance which Lessor deems necessary from time to time, and elects to carry applicable to the real property upon which the Premises is located.

(2) Secure and maintain a policy of comprehensive or commercial general liability coverage (occurrence form), in an amount of not less than \$1,000,000 per occurrence, and at least \$2,000,000 annual aggregate during the term of this Agreement. Lessee shall be added as an additional "insured" to this policy for any injury to person or damage to property occurring on the premises. Lessee shall be provided with a certificate of insurance and endorsements evidencing such coverage.

(3) Lessor hereby expressly waives and releases any cause of action or right of recovery which Lessor may have hereafter against the Lessee for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk covered by insurance; and,

(4) Lessor shall obtain a waiver from any insurance carrier with which Lessor carries fire, explosion or any other risk coverage insuring the building and other improvements releasing its subrogation rights against Lessee.

B. Lessee, at its sole cost and expense, shall:

(1) Maintain fire insurance on all contents owned by the Lessee located at the Premises.

(2) Lessee may fund any financial obligation relating to its negligence and liability through a program of self-funding administered by its Risk Management Division. Any and all claims related to the use of the Premises by Lessee shall be forwarded to Lessee in a timely manner.

(3) Lessee hereby expressly waives and releases any cause of action or right of recovery which Lessee may have hereafter against the Lessor for any loss or damage to the Premises, or to the contents thereof belonging to either, caused by fire, explosion, or any other risk and,

(4) Lessee shall obtain a waiver from any insurance carrier with which Lessee carries fire, explosion or any other risk coverage insuring the Premises or the contents thereof releasing its subrogation rights against Lessor.

(5) In the event Lessee's occupancy causes any increase of premium for Lessor's insurance on the Premises, or any parts thereof, above the rate applicable to the type of occupancy identified in the Agreement. Lessor shall notify Lessee in writing of such increase. Lessee shall have fifteen (15) days after receipt of written notification from Lessor of such increase to correct or mitigate, if applicable, said circumstances that resulted in the need for a premium increase. If Lessee is unable to mitigate or correct said hazardous occupancy, Lessee shall upon written agreement pay the increased premium or terminate said Agreement.

## **SECTION EIGHTEEN**

### **HAZARDOUS SUBSTANCES**

A. Lessee shall not cause or permit any hazardous substances to be used, stored, released, manufactured or disposed in or upon the Premises, except in the minimum quantities as are customary and usual in connection with Lessee's permitted use. If the Premises become contaminated as a result of a violation by Lessee of this Section Eighteen, for which Lessee is legally liable, Lessee shall indemnify, defend and hold Lessor harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments.

B. If hazardous substances have been used, stored, released, manufactured or disposed in or upon the Premises or connected areas outside the Premises, or if the Premises or connected areas outside the Premises, are or become contaminated in any manner, for which Lessor is legally liable, Lessor shall indemnify, defend and hold Lessee harmless from all related claims, judgments, penalties, costs or losses, including all expenses incurred for investigation, removal, remediation and restoration mandated by federal, state and local governments.

C. "Hazardous Substances" mean all toxic, ignitable, reactive and corrosive substances regulated by federal, state or local governments.

## **SECTION NINETEEN**

### **SUBORDINATION, ATTORNMENT AND NON-DISTURBANCE**

A. This Agreement, at Lessor's option, shall be subordinated to any mortgage, deed of trust, or any other hypothecation for security now or hereafter placed upon Lessor's leasehold interest in the real property or building of which the Premises are a part and which constitute a mortgage or deed of trust lien or encumbrance against Lessor's interest in such Premises or building and to any and all advances made on the security thereof and to all the renewals, modifications, amendment, consolidations, replacements and extensions thereof.

B. Lessee agrees to execute any documents required to effectuate such subordination to the lien of any mortgage, deed of trust, or other security document, as the case may be, and failing to do so within fifteen (15) days after written demand shall give Lessor the right to terminate this Agreement and immediately re-enter the Premises.

C. Lessee shall in the event of the sale, financing, or assignment of Lessor's interest in the real property or building of which the Premises are a part, or in the event of any proceeding brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage or deed of trust made by Lessor covering the Premises, attorn to the purchaser or assignee and recognize such purchaser or assignee as Lessor under this Agreement.

D. Any purchaser, assignee, or other party acquiring Lessor's interest in the real property or building of which the Premises are a part, agrees to recognize the validity and enforceability of this Agreement and that notwithstanding any default by Lessor with respect to any mortgage, deed of trust, or other security document, Lessee's possession, quiet enjoyment and all of Lessee's rights under this Agreement in and to the Premises shall not be disturbed by such purchaser, assignee or other party unless Lessee is in default under the terms of this Agreement.

## **SECTION TWENTY**

### **QUIET ENJOYMENT**

Lessee, while in compliance with the terms and covenants herein, is entitled to the quiet enjoyment of the Premises for the term hereby created.

## **SECTION TWENTY-ONE**

### **ASSIGNMENT AND SUBLEASE**

This Agreement may be assigned or the Premises sublet only with the prior written consent of the Lessor. Lessor shall consent to an assignment or subletting provided the proposed assignee is, in Lessor's judgment, a suitable tenant that can demonstrate to Lessor's satisfaction that it is compatible with the building and other tenants of the building and has the financial and operational capability to remain through the Agreement term. Any rents or other consideration due from an assignee or sublessee, in excess of the rents due under this Agreement from Lessee shall be paid to Lessor.

## **SECTION TWENTY-TWO**

### **NOTICES**

All notices and demands which may be required to be served upon the respective parties to this Agreement shall be in writing and may be served either personally, by a recognized overnight courier, or by certified mail, postage prepaid, addressed to the Lessee at the address of the Premises herein, with a copy to Washoe County Community Services Department, P.O. Box 11130, Reno, NV 89520-0027, and if to Lessor to both Mercey Springs 152 Partners, LLC c/o Selective Real Estate Investments, Inc., 15840 Ventura Boulevard, Suite 310, Encino, CA 91436 and a copy to Mercey Springs 152 Partners, LLC, c/o Eugene Berger Management Corporation, 5011 Meadowood Mall Way Suite 200, Reno NV 89502 or at such other address as the parties may designate and serve upon the other. Any service by mail shall be deemed served upon deposit in the United States Post Office, excluding notices of renewal or termination which shall be sent return receipt requested.

## **SECTION TWENTY-THREE**

### **ATTORNEYS' FEES**

If either party to this lease institutes any legal action or alternate dispute resolution proceeding to collect damages or to enforce any provision of this lease, each party agrees to bear its own attorneys' fees and cost of suit and that neither party shall be entitled to recover any

amount of attorney's fees or costs from any other party for legal services, even if the party claiming such fees and costs is deemed the prevailing party in the action.

#### **SECTION TWENTY-FOUR**

##### **TERMINATION**

A. Upon termination of this Agreement, Lessee shall quit the Premises peaceably, with no damage to the Premises, normal wear and tear, normal wear and tear and damage outside the control of Lessee excepted, and shall remove all of Lessee's personal property from the Premises.

B. The failure by Lessee or Lessor to make any payment or observe or perform any covenants, conditions or provisions of this Agreement required to be made, observed or performed by such party, after thirty (30) days written notice of such default shall constitute a default of this Agreement by such party; provided, however, that if the nature of the default (other than the payment of money) is such that more than thirty (30) days are reasonably required for its cure, then the defaulting party shall not be deemed to be in default if such party commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion. Upon default, the non-defaulting party may pursue all remedies available under Nevada law, including termination of the Agreement and recovery of all damages caused by such default.

C. In the event Lessee shall acquire a County owned building in which Lessee shall conduct the same function it is currently performing in place of its operation in the Premises, Lessee may cancel this Agreement after the twenty-fourth (24) month by giving Lessor six (6) months prior written notice of its intention to do so and Lessee shall pay a penalty equal to six (6) month payment of the last month's base rental or the base rent amount due July 1, 2016, whichever is greater; provided however, that Lessee is not in default of any of the terms contained in this Agreement.

D. Any service by mail shall be deemed served upon deposit in the United States Post Office, excluding notices of renewal or termination which shall be sent return receipt requested.

**SECTION TWENTY-FIVE**  
**CHOICE OF LAW; VENUE**

This Agreement shall be construed in accordance with and be governed by the Laws of the State of Nevada. All parties hereto consent to the personal jurisdiction of any state or federal court of competent jurisdiction located in Washoe County, Nevada and to the service of process by any means authorized by any such state or federal court or under the laws of the State of Nevada. The exclusive venue of any action, proceeding or counterclaim arising out of or in connection with this Agreement shall be Washoe County, Nevada.

**SECTION TWENTY-SIX**  
**FUNDING OUT CLAUSE**

Lessee's obligations under the Lease Agreement, including any penalties that may accrue, are conditioned upon the following: In its legislative discretion, the Board of County Commissioners must have approved this Lease Agreement, appropriated adequate and available funds for Lease payments and penalties for each fiscal year, and has not imposed a budget freeze, budget cuts or spending moratorium requiring the termination of this Agreement. Pursuant to NRS 244.320, in the event Washoe County fails to appropriate budget funds specifically for the purpose of maintaining such Premises, in any subsequent fiscal year after the effective date of the Agreement, Lessor hereby agrees to cancel this Agreement and hold Lessee harmless from any penalty, charge, or sanction for such cancellation. Lessee agrees to provide written notice to Lessor of this eventuality, should it occur.

**SECTION TWENTY-SEVEN**  
**EFFECT OF AGREEMENT**

A. This Agreement constitutes the entire contact between the parties and no obligation other than those set forth herein will be recognized unless endorsed hereto in writing.

B. Each of the covenants, warranties, and agreements herein contained are binding on the parties hereto, their successors, assigns and legal representatives. In the event of any breach of these covenants, warranties and agreements by Lessee during the duration of this Agreement, whether or not discovered by or known to Lessor during the term, Lessor expressly reserves unto itself the right to pursue appropriate legal action against Lessee to correct or cure said breaches or deficiencies.

**SECTION TWENTY-EIGHT**

**LESSOR'S REPRESENTATIVE AND AUTHORITY**

Lessor represents and warrants that the signature block below for Lessor accurately describes Lessor's current corporate ownership, agencies or representatives and capacities, that each such entity, including Lessor, has by proper action pursuant to each entity's respective formation documents duly authorized the execution of this Agreement duly delegated such authority to a lawful representative, and that there exist no contractual or legal impediments to the execution and performance required hereunder by Lessor.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date and year first above written.

**LESSEE: WASHOE COUNTY, a political sub-division of the State of Nevada, (COUNTY)**

By: \_\_\_\_\_

Chairman,  
Washoe County Commission

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he/she executed the same freely and voluntarily for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public

**LESSOR: MERCEY SPRINGS  
152 PARTNERS, LLC**

A California Limited Liability Company  
By Selective Real Estate Investments, it's Manager

By: \_\_\_\_\_

Brian Fagan, President

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2015, before me a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the person described herein and who executed the foregoing instrument and who acknowledged to me that he/she executed the same freely and voluntarily for the uses and purposes therein mentioned.

\_\_\_\_\_  
Notary Public